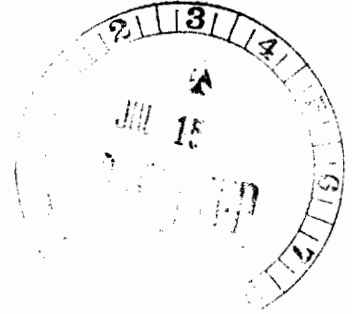


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LAW OFFICE  
**JOHN D. HEFFNER, PLLC**  
1750 K STREET, N.W.  
SUITE 350  
WASHINGTON, D.C. 20006  
PH: (202) 296-3333  
FAX: (202) 296-3939



VIA HAND DELIVERY

July 15, 2008

Mr. Troy Brady  
Section of Environmental Analysis  
Surface Transportation Board  
395 E Street SW  
Washington, DC 20423

Re: Finance Docket No. 35141  
U S Rail - Construction and Operation Exemption -  
Brookhaven Rail Terminal

Dear Mr. Brady,

Enclosed please find an original and three executed copies  
of the Memorandum of Understanding in this matter. Please return  
a stamped copy to the undersigned.

Thank you for your time and consideration.

Very truly yours,  
John D. Heffner, PLLC

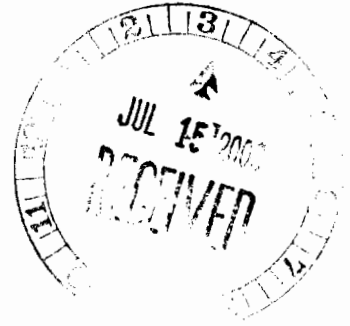
*James H. M. Savage*  
By: James H. M. Savage

JHMS/mhd  
Enc.

Cc: (via E-Mail)  
Gabriel D. Hall  
Richard A. Pugh  
Gerard T. Drumm

**MEMORANDUM OF  
UNDERSTANDING**

**AMONG SURFACE TRANSPORTATION  
BOARD, U S RAIL CORPORATION, AND  
GANNETT FLEMING INC.**



**RE: ENVIRONMENTAL ANALYSIS AND PREPARATION OF APPROPRIATE  
ENVIRONMENTAL DOCUMENTS RELATING TO THE CONSTRUCTION  
AND OPERATION OF A PROPOSED RAIL FACILITY BY U S RAIL  
CORPORATION IN BROOKHAVEN, NEW YORK**

**I. Introduction and Purpose**

- A. U S Rail Corporation ("U S Rail" or "Petitioner") intends to file a Petition for Exemption ("Petition") seeking authority from the Surface Transportation Board ("Board") to construct and operate a line of rail connecting to the existing Long Island Rail Road line in the Town of Brookhaven ("Brookhaven"), in Suffolk County, Long Island, New York.
- B. In considering the Petition, the Board will consider the potential environmental impacts resulting from construction and operation of the proposed rail line and any rail-related alternatives. The Board will be the lead agency for preparing the environmental documentation required for the project, either an Environmental Impact Statement or Environmental Assessment, as required by the National Environmental Policy Act of 1969 ("NEPA"). Pursuant to 40 CFR 1506.5(c), 49 CFR 1105.4(j), and 1105.10(d), the Board, through its Section of Environmental Analysis ("SEA"), has selected and Petitioner has agreed to engage, at Petitioner's expense, Gannett Fleming, Inc. ("Contractor") as the Independent Third Party Contractor for this proposal. Contractor shall assist SEA in conducting the

environmental review and preparing the environmental documentation<sup>1</sup> related to the Petitioner's proposal. Contractor's scope of work, approach, and activities shall be under the sole supervision, direction, and control of SEA.

C. This Memorandum of Understanding ("Memorandum") is to summarize the relationship among Contractor, Petitioner, and SEA, as set forth in applicable regulations and Board policy, regarding the conditions and procedures each party must follow in preparing all environmental documentation. This Memorandum does not supersede or amend, and is made expressly subject to, the requirements of NEPA, and, to the extent applicable, related environmental laws, and 49 CFR Part 1105 and 40 CFR Part 1500.

D. The Petitioner, Contractor, and SEA agree to work within the framework of this Memorandum to develop an efficient method to complete the environmental review for the proposed Petition. SEA shall maintain overall responsibility for the documentation, analysis, methodology, consultation, and mitigation related to the environmental review process. SEA shall direct, evaluate, oversee, and approve the environmental review process.

## II. Agreement between Petitioner and Contractor

A. Any contract between Petitioner and Contractor, and any subcontracts, shall be consistent with the provisions of this Memorandum.

B. The terms of this Memorandum shall override any contradictory or conflicting terms regarding the scope and performance of any work to be conducted under any

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<sup>1</sup> The terms "environmental documentation" and "environmental document(s)" embrace draft, supplemental, and final EAs, EISs, and any other reports, studies, surveys, or related documents.

contract entered into between Petitioner and Contractor; provided, however, that the foregoing shall not limit the rights of Petitioner and Contractor to contract on terms which require that the work be performed cost-effectively and in a timely manner.

- C. The contract between Contractor and Petitioner shall specifically provide, and Contractor shall represent, that (1) Contractor and any subcontractors do not and shall not have any financial or economic interest in Petitioner or the Petition, except for payment for services rendered in connection with the preparation of all required environmental documentation, and except for services rendered pursuant to other agreements not prohibited by this Memorandum, and (2) there is no agreement between Petitioner or any other party and Contractor regarding future employment that is contingent upon Contractor's performance under the contract. Contractor shall concurrently execute, and each subcontractor, at the time of its engagement, shall execute, a disclosure statement as mandated by the regulations of the Council on Environmental Quality (CEQ (40 CFR 1506.5(c)) and submit it both to SEA and Petitioner, before beginning any work under SEA's direction. It is understood that Contractor and any subcontractors have not done any environmental analysis related to the Petition for Petitioner or any other party and, therefore, can be retained as independent third party contractor(s).

- D. Restrictions on other work.

- (1) No employee of Contractor or employee of any subcontractor, who is a part of Contractor's core team committed to the environmental review process

for the Petition shall engage in (a) other work for Petitioner, or (b) any work, relating to the Petition, for any other party to this proceeding during the course of this proceeding.

(2) No other employee of Contractor or other employee of any subcontractor shall engage in the environmental review process of the Petition, unless SEA and Applicant are provided prior notice, and no other employee of Contractor or any subcontractor shall engage in the environmental review process of the Petition unless SEA and Applicant are provided notice within one week.

(3) No other employee of Contractor or other employee of any subcontractor shall, unless SEA is provided prior notice of and approves such work, engage in (a) other work for Applicant, or (b) any work, relating to the Petition before the Board, or any cooperating agencies that may elect to participate in this process, or any other party to this proceeding during the course of this proceeding.

E. Petitioner shall bear the costs incurred by Contractor, and by any subcontractor approved by SEA in accordance with Section III.A, in preparing the required environmental documentation to implement NEPA and related environmental laws under the direction of SEA. Petitioner agrees to hold harmless and indemnify the United States of America and the Board with respect to any and all claims, demands, causes of action, and the like which may arise in performing the work under the contract between Contractor and Petitioner.

- F. Any contract between Contractor and Petitioner shall specifically limit any remedies available to Contractor or subcontractors upon termination of the contract to affirmatively relieve the United States of America, the Board, and any officer, agent, or employee, from any liability from terminating the contract.

### III. Contractor Responsibilities

- A. Contractor may engage subcontractors to perform work related to environmental review of the Petition, subject to the provisions of Sections II.C and II.D. All work performed by Contractor or any subcontractors shall be under the sole direction, control, supervision, and final approval of SEA. Contractor and subcontractors, if any, will act as the agent(s) of the Board, not Petitioner, in performing its/their duties.
- B. Contractor shall provide:
- (1) Appropriate expertise in the areas of environmental concern (including, but not limited to air quality, biological resources, geotechnical resources, hydrology, land use, safety, noise, social and economic, and cultural/historic resources).
  - (2) A good working knowledge of environmental laws, applicable federal laws and regulations (including environmental regulations) administered or promulgated by the Board, CEQ regulations and guidelines, other applicable federal regulations, applicable state laws and regulations, and applicable local ordinances and regulations.

- (3) The capability to perform environmental impact analysis and prepare appropriate environmental documentation.
- (4) Thorough, readable, technically sound, and informative environmental documents, as well as related charts, maps, diagrams, etc.
- (5) Representatives to attend and/or facilitate meetings with Federal, state, regional, and local agencies, other interested parties and Petitioner for the purpose of exchanging and obtaining information, explaining the Petition and related environmental concerns and impacts, and receiving comments in preparing the required environmental documentation.
- (6) Expertise in data management.
- (7) Assistance to SEA in ensuring that the data collection, analyses, and methodologies for the environmental documents are complete, accurate, and relevant to SEA's needs for the environmental review of the Petition under NEPA.

C. Contractor shall maintain and provide SEA upon request:

- (1) Adequate record-keeping and reporting systems to assure preservation of all data gathered, including surveys, studies, etc.
- (2) Logs summarizing all telephone calls, meetings, document reviews, and other substantive communications with SEA, Petitioner, local governments, governmental agencies, citizens' groups, and any other interested parties.
- (3) Lists of all agencies, other railroads, citizens' groups, organizations, and



individuals (including their respective addresses and telephone numbers) contacted in preparing the environmental documentation.

- D. Contractor shall perform the work in a timely, responsive, satisfactory, and cost-effective manner, pursuant to a work schedule developed with SEA in coordination with Petitioner and approved by SEA.
- E. Contractor shall assist SEA in coordinating the exchange of all relevant ~~environmental information and technical data/studies related to the Petition and~~ SEA in preparing all required environmental documentation among SEA staff, Petitioner's staff and representatives, Contractor, and any subcontractors, related to the Petition and necessary in preparing all required environmental documentation.
- F. Contractor will submit directly to SEA any and all work Contractor performs in preparing all required environmental documentation, studies, surveys, etc. Contractor, and any subcontractors, shall not disclose the results of their work nor release any of the underlying work papers, drafts, or other materials prepared under the contract to anyone, including Petitioner, without SEA's express authorization. In no case shall Petitioner be provided the opportunity to modify or edit Contractor's work prior to submission to SEA, without SEA's express authorization.
- G. Contractor shall follow the directions and instructions of SEA, and incorporate them into the environmental document(s) in a timely and responsive manner. Contractor shall submit preliminary and final drafts of any documents to SEA for final review and approval.

- H. Contractor shall provide SEA access to and the right to review all procedures and underlying data used in Contractor's development and preparation of any and all environmental documents. This includes, but is not limited to, field reports/surveys, technical studies and analyses, subcontractor reports, and interviews with concerned private and public parties, whether or not such information may be reflected in draft, supplemental, or final environmental documents submitted to SEA.
- I. Contractor, and any approved subcontractors, shall cooperate fully with SEA in organizing, participating in, and conducting any public workshops, informational meetings, and other meetings, as SEA determines are necessary, to foster public understanding of and/or participation in the environmental review process, and to assess potential environmental impacts and develop mitigation measures related to the Petition.
- J. Contractor will assist SEA in reviewing comments received during the environmental review process, will draft a summary of relevant comments, and will coordinate analysis of these comments with SEA.
- K. Contractor shall assist SEA in preparing the required environmental documentation, environmental recommendations, selection of alternatives, and development of mitigation measures.
- L. The Contractor's Project Director, Project Manager, and other technical experts, as appropriate, shall be available to attend all meetings, briefings, consultations, and site visits as SEA deems necessary. The Project Director and the Project Manager shall devote as much time to environmental review of the Petition as is necessary to

assure Contractor's performance of its responsibilities under this Memorandum. This work commitment will extend for the entire time necessary to complete the environmental review for the Petition.

M. Except as specifically authorized by SEA, Contractor and any of its subcontractors shall refer all media/press inquiries directly to SEA.

N. As needed, Contractor will provide technical expertise and administrative support to SEA during preparation of the Board's decision and in addressing any environmental issues arising in the Board's consideration of Finance Docket 35141. In the event of any appeal from a Board decision in Finance Docket 35141, the parties hereto shall at that time determine the need for and terms of Contractor's services in connection with judicial review of that decision.

#### IV. Petitioner Responsibilities

A. Petitioner shall retain and pay Contractor to assist in preparing all required environmental documentation and services, as that assistance and its costs are defined by a contract to be negotiated and executed by Petitioner and Contractor, and in the Work Plan described in Section VI.

B. Petitioner, including its staff and representatives, shall provide to SEA and Contractor any requested supportive expertise, resources, data, and technical capabilities necessary to undertake the environmental analysis, subject to the right of Petitioner to advise SEA of any request received from SEA or Contractor that Petitioner believes either is not germane to matters appropriately reviewed in the environmental review process, is contrary to applicable statutes and regulations,

would impose an extraordinary burden on Petitioner, or is subject to the right or obligation of Petitioner to maintain confidentiality as to proprietary, privileged, or other information which is not otherwise subject to disclosure. In the event that Petitioner so advises SEA, SEA shall determine whether the request is appropriate and shall so advise Petitioner and Contractor of its determination. SEA shall, to the extent possible, maintain the confidentiality of any information if so requested by Petitioner.

- 
- C. Petitioner shall cooperate fully with SEA in organizing and participating in any public workshops, hearings, and meetings, as SEA determines are necessary (1) to foster public understanding and/or participation in the environmental review process, and (2) to assess potential environmental impacts and mitigation measures related to the Petition.
- D. With respect to all reports, analyses, and documents, including drafts, supplements, and final copies of the environmental documents, Petitioner shall be responsible for Contractor's administrative and clerical costs, as well as the costs of graphics, maps, layout, mailing, and printing, as those costs are defined by a contract to be negotiated and executed by Petitioner and Contractor. However, Petitioner shall have the option of directing that the printing of the environmental documentation be performed by a private entity, rather than SEA. Petitioner shall be solely responsible for the cost of preparing and providing to SEA the appropriate number of copies of all required environmental documentation.

- E. Petitioner shall provide complete, accurate, relevant, and timely responses to all reasonable requests for information pertaining to the Board, the Operating Plan, and the environmental aspects and effects of the proposed rail construction and operation.
  - F. In the event of any litigation resulting from the environmental analysis in this proceeding SEA shall at any time, in consultation with Petitioner, determine the need for and terms of Contractor services in connection with any litigation.
- 

V. Board/SEA Responsibilities

- A. The Board is responsible for ensuring compliance with the requirements of NEPA and other applicable environmental statutes and regulations by preparing appropriate environmental documentation.
- B. SEA shall:
  - (1) Direct, review, and approve all phases of preparing all required environmental documentation, including the work of Contractor, using SEA's best efforts to ensure that the work is reasonably necessary to conduct the environmental review process regarding the Petition and the work is within the scope of NEPA requirements. For example, SEA shall ensure that Contractor considers existing data and environmental analyses available from the Petitioner, SEA, and other sources, and that Contractor does not duplicate work already done, unless SEA determines that the existing data is not adequate for use in preparing the environmental documentation.

- (2) Designate appropriate staff to review and approve all work as it is developed and completed.
  - (3) Ensure that its representatives attend meetings, as needed, with Federal, state, regional, and local agencies, and other interested parties, as well as any public hearings or meetings, to exchange information, explain the Petition and related environmental concerns and impacts, obtain technical input, and receive comments in preparing all required environmental documentation.
  - (4) Coordinate, with Contractor's assistance, the exchange of information among any planning, design, or construction engineers or technical staff employed by Petitioner and Contractor.
- C. SEA will periodically review the work of Contractor to ensure that the Board's responsibilities under NEPA and related environmental laws and regulations are being satisfied. As each portion of any draft or final document is completed, SEA staff shall review and approve that portion and those tasks completed, and/or direct further work with regard to that portion or task.
- D. SEA will monitor Contractor to ensure that Contractor is making adequate progress toward meeting specific time frames established in the Work Plan described in Section VI. If SEA determines these commitments are not being met, it will notify Petitioner of its findings. It will be the responsibility of the SEA to recommend any necessary corrective action to be taken under this Memorandum.

- E. In all instances involving questions concerning the content or relevance of any material (including all data, analyses, charts, and conclusions) prepared by Contractor, SEA shall make the final determination on including, deleting, or revising any such material in the environmental documents.
- F. To coordinate the preparation of all required environmental documentation, and to verify Petition-related data, SEA may hold joint meetings with Petitioner and Contractor. As necessary, SEA may exclude Petitioner from participation. SEA may also consult directly with appropriate Federal, state, and local officials and other interested parties.
- G. SEA, with the assistance of Contractor, will be responsible for organizing and conducting any public workshops or meetings that may be necessary in preparing environmental documents during the environmental review process.
- H. SEA, with the assistance of Contractor, will receive all relevant comments submitted during the environmental review process and comment period. At the close of any public review and comment period, SEA, in consultation with Contractor, shall identify the issues and comments that will require a response from the Board. SEA may direct these comments to Petitioner and to Contractor, as appropriate, to be included in the final environmental document. SEA may modify these responses as appropriate.
- I. SEA, with the assistance of Contractor, shall prepare final recommendations for the Board.

- J. SEA shall retain responsibility for deciding the environmentally preferable alternative, and any mitigation measures to be included in the final environmental document.

## VI. Work Plan

- A. Contractor, in consultation with SEA and Petitioner, shall submit a draft Work Plan to SEA for preparing the required environmental documentation within forty-five (45) days after all parties have signed this Memorandum. The draft Work Plan shall contain at least the following elements:

- (1) A description of all work to be performed (including preparing and sending consultation letters; participating in public and agency meetings; outlining and drafting environmental documents; reviewing, analyzing, and summarizing public comments; conducting analyses, etc.).
- (2) The projected schedule for completing the various tasks described.
- (3) Identification of Contractor's staff members who will be responsible for preparing, analyzing, and reviewing the work.
- (4) An outline of the environmental analysis.

- B. Following receipt of the draft Work Plan, SEA, in consultation with Contractor and Petitioner, shall finalize the Work Plan in a timely manner.
- C. Subsequent to consultation with Contractor and Petitioner, SEA may amend the Work Plan from time to time as the environmental review of the Petition may necessitate. The parties hereto shall consult at least once every two weeks to



confirm that the Work is being performed in the most efficient and cost-effective manner and to consider possible measures to improve the efficiency and cost effectiveness of performance of the Work.

## VII. Disputes

Disputes between the parties may arise regarding the environmental review process, including approach, methodology, analysis, conclusions, and performance of the obligations of the parties to this Memorandum. The parties agree to seek resolution of disputes among the individuals or parties directly involved. In the event that resolution is not achieved, the parties agree to make further attempts at resolution before bringing the dispute to the next supervisory level, and all individuals or parties directly involved shall be notified in the case of such a referral to the next supervisory level. In addition, the parties may seek independent facilitation or mediation to assist in resolving disputes in the event that resolution is not achieved.

## VIII. Non-performance and Termination

- A. Petitioner or Contractor shall notify SEA of any concerns either party might have with respect to the other party's performance under the contract between Petitioner and Contractor or this Memorandum. All parties will attempt to resolve, in good faith, any disputes or disagreements.
- B. If SEA determines that either Contractor or Petitioner is not adequately performing its responsibilities and duties in accordance with this Memorandum, SEA will discuss its concerns with Contractor and Petitioner. If SEA's concerns cannot be satisfactorily resolved, SEA will notify Petitioner that SEA is removing Contractor

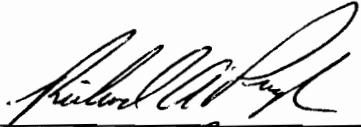
for cause, or direct Petitioner to comply with this Memorandum. Upon removal of Contractor, SEA shall endeavor to replace Contractor with another qualified Contractor as soon as practicable.

- C. Both Petitioner and Contractor shall immediately notify SEA of any attempt by either party to modify or terminate the contract between Petitioner and Contractor. Termination of the Contract shall be subject to SEA's prior approval, after consultation with Petitioner and Contractor. Upon approving termination of the contract, SEA shall endeavor to replace Contractor with another qualified Contractor as soon as practicable. Notwithstanding the foregoing, Petitioner may terminate the contract without SEA's approval in the event that it withdraws its notice of intent or Petition.

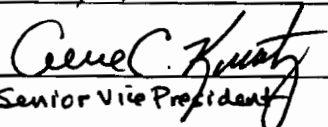
IX. Modification

This Memorandum of Understanding may be modified only by written amendment executed by SEA, Petitioner, and Contractor.

**GANNETT FLEMING INC.**

By:   
Vice President

Date: 7/11/08

By:   
Senior Vice President

Date: 7/11/08  
Two signatures required for corporation

**U S RAIL CORPORATION,  
PETITIONER**

By: \_\_\_\_\_  
Gabriel D. Hall, President

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Danielle Hall

Date: \_\_\_\_\_

for cause, or direct Petitioner to comply with this Memorandum. Upon removal of Contractor, SEA shall endeavor to replace Contractor with another qualified Contractor as soon as practicable.

- C. Both Petitioner and Contractor shall immediately notify SEA of any attempt by either party to modify or terminate the contract between Petitioner and Contractor. Termination of the Contract shall be subject to SEA's prior approval, after consultation with Petitioner and Contractor. Upon approving termination of the contract, SEA shall endeavor to replace Contractor with another qualified Contractor as soon as practicable. Notwithstanding the foregoing, Petitioner may terminate the contract without SEA's approval in the event that it withdraws its notice of intent or Petition.

IX. Modification

This Memorandum of Understanding may be modified only by written amendment executed by SEA, Petitioner, and Contractor.

**GANNETT FLEMING INC.**

By: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_  
Two signatures required for corporation

**U S RAIL CORPORATION,  
PETITIONER**

By: G. Hall  
Gabriel D. Hall, President

Date: 7-14-08

By: D. Hall, V.P.

Date: 7-14-08

**SURFACE TRANSPORTATION BOARD,  
SECTION OF ENVIRONMENTAL ANALYSIS**

By:

Victoria K. Utson

By:

/

Title:

Chrg, SEA

Title:

/

Date:

July 18, 2008

Date:

/